

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

PAUL M. NEESE, #47529

PETITIONER

VERSUS

CIVIL ACTION NO. 4:09-cv-107-HTW-LRA

RON KING, Superintendent of SMCI

RESPONDENT

MEMORANDUM OPINION

Petitioner filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254. On March 2, 2010, this Court entered an Order [7] that denied Petitioner's request to proceed *in forma pauperis* and directed Petitioner to pay the \$5.00 filing fee, within twenty days. The Order [7] warned Petitioner that failure to keep this Court informed of his current address or failure to timely comply with the requirements of the Order would lead to the dismissal of his Petition. Petitioner failed to comply with this Order.

On April 14, 2010, an Order [8] was entered directing Petitioner to show cause, on or before April 29, 2010, why this case should not be dismissed for his failure to comply with the Court's March 2, 2010 order. In addition, Petitioner was directed to comply with the Order [7] of March 2, 2010, by paying the required filing fee on or before April 29, 2010. The Order to Show Cause [8] warned Petitioner that failure to keep this Court informed of his current address or failure to timely comply with the requirements of the Order would lead to the dismissal of his Petition without further notice. Petitioner failed to comply with this Order.

Since Petitioner is proceeding *pro se*, he was provided one additional opportunity to

comply with the Court's orders prior to summary dismissal. On May 17, 2010, a Final Order to Show Cause [10] was entered directing Petitioner to show cause, on or before May 31, 2010, why this case should not be dismissed for his failure to comply with the Court's Orders [7, 8] of March 2, 2010, and April 14, 2010. In addition, Petitioner was directed to comply with the Order [7] of March 2, 2010, by paying the required filing fee on or before May 31, 2010. The Final Order to Show Cause [10] also warned Petitioner that failure to keep this Court informed of his current address or failure to timely comply with the requirements of the Order would lead to the dismissal of his Petition without further notice. Petitioner has not complied with this Order.

Petitioner has failed to comply with three Court orders and he has not contacted this Court since December 14, 2009. This Court has the authority to dismiss an action for failure to prosecute and failure to comply with court orders under Rule 41(b) of the Federal Rules of Civil Procedure and under its inherent authority to dismiss the action *sua sponte*. See generally *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Larson v. Scott*, 157 F.3d 1030 (5th Cir.1998); *McCullough v. Lynaugh*, 835 F.2d 1126 (5th Cir. 1988). The Court must be able to clear its calendars of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief, so as to achieve the orderly and expeditious disposition of cases. *Link*, 370 U.S. at 630. Such a "sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars" of the Court. *Id.* at 629-30.

The Court concludes that dismissal of this action for Petitioner's failure to prosecute

and failure to comply with the orders of the Court under Rule 41(b) of the Federal Rules of Civil Procedure is proper. Since the Respondent has not been called on to respond to the Petition, and the Court has not considered the merits of Petitioner's claims, the Court's order of dismissal is without prejudice. *See Munday/Elkins Auto. Partners, LTD. v. Smith*, 201 Fed. Appx. 265, 267 (5th Cir. 2006).

A Final Judgment in accordance with this Memorandum Opinion will be entered.

SO ORDERED, this the 21st day of June, 2010.

**s/ HENRY T. WINGATE
CHIEF JUDGE
UNITED STATES DISTRICT COURT**